

NOTICE

Decision filed 12/30/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 IL App (5th) 090541-U

NO. 5-09-0541

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellee,

v.

THOMAS AMSDEN,

Defendant-Appellant.

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Appeal from the  
Circuit Court of  
St. Clair County.

No. 09-CF-401

Honorable  
John Baricevic,  
Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Goldenhersh and Wexstten concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where the circumstantial evidence of residential burglary was sufficient to establish defendant's guilt beyond a reasonable doubt, we affirm the conviction.

¶ 2 **FACTS**

¶ 3 Defendant was charged with the residential burglary of the home of his aunt, Pamela Amsden. He was also charged with theft.

¶ 4 Pamela testified at trial that her home was in Dupu, Illinois. Defendant periodically stayed with her when he was unemployed and/or without a home. She only allowed defendant to enter her home if she was present. Pamela worked in St. Louis from Monday through Friday. She always left her home at about 5:30 a.m. and returned in late afternoon.

¶ 5 Pamela testified that on April 8, 2009, she left for work at 5:30 a.m., locking both doors to her home. She returned home that day at about 3 p.m. She discovered that the back door of her home was broken open, with the lock being damaged. Pamela determined that

most of her home was untouched; however, someone had entered her bedroom. The drawers to her jewelry box were open and had been dumped out onto her bed. She later determined that several of her rings were missing.

¶ 6 Pamela immediately reported the crime to the police. She did not mention her nephew as a possible suspect.

¶ 7 Later that evening, defendant telephoned his aunt and apologized to her. He told her that he had taken a drug called "ecstasy." He begged her not to file charges against him. He did not specifically admit to Pamela that he had been in her home and taken her jewelry.

¶ 8 Officer Carl Mendenhall testified at the trial. He is a Dupo police officer. He went to Pamela's home after a report of a possible burglary. He testified that the side door of Pamela's home had been kicked in and that only her jewelry in her bedroom had been disturbed. He asked Pamela if she suspected anyone of committing the crime. Pamela told him that she had no idea about who could have broken into her home. He did not ask any of Pamela's neighbors if they had seen anyone at the house. He began his investigation by contacting Pamela's family members, including defendant. He was familiar with defendant before this incident. Pamela told Officer Mendenhall that defendant was working at the Columbia McDonald's restaurant that date. Officer Mendenhall coordinated with the Columbia police department to determine whether defendant was at work. Officer Mendenhall then went to the home of one of defendant's friends, Bruce Johnson. Bruce Johnson informed Officer Mendenhall that defendant had just left his home. Bruce gave the officer consent to search his home. During the search, Officer Mendenhall found a jewelry box that contained four women's rings and two earrings. He took the rings and traveled back to Pamela's house. He showed the rings to Pamela, who promptly identified the rings as her own. One ring that was missing, which was gold with genuine stones, was not among the four the officer showed her. Officer Mendenhall testified that Pamela's home was within

walking distance from the home of Bruce Johnson, who was one of defendant's friends.

¶ 9 Bruce Johnson testified that defendant came to his home in the morning of April 8, 2009, sometime between 9:30 and 10 a.m. Defendant pulled out four rings and two sets of earrings, asking Bruce if the items were "real" or whether they were costume jewelry. Bruce claimed that the men took a nap until 1 or 2 o'clock in the afternoon. When they woke up, defendant made a couple of phone calls and then left. Bruce did not know specifically where defendant was going but testified that defendant said he was going to obtain cigarettes and marijuana and go to a pawn shop. Shortly after defendant left, the Dupo officers arrived. Bruce told the officers that defendant lived there at times. He also told the officers that defendant had been in his home earlier that day. The officers asked Bruce if they could search his home. Bruce said that they could. He assumed that they were looking for the jewelry defendant had shown him, and so Bruce went into the dining room where he saw defendant go before he left his home. In the dining room, Bruce had his own jewelry box on top of a china hutch. Bruce opened the jewelry box and saw the rings that defendant had shown him earlier in the day. Bruce showed the officers this jewelry. Later that evening, defendant called Bruce and told him that he should not have given the jewelry to the police.

¶ 10 Defendant's stepgrandmother, Veda Amsden, testified that on the morning of the burglary, she had received a call from defendant asking for a ride. She picked him up at his girlfriend's home at approximately 7:30 a.m. She drove him from his girlfriend's home back to Bruce Johnson's home where he planned on retrieving his McDonald's uniform. Veda then left and returned to her home.

¶ 11 On April 8, 2009, at about 3:30 p.m., Officer John Simon of the Columbia police department was asked by Officer Mendenhall to go the Columbia McDonald's to determine if defendant was working. Defendant was not there. Officer Simon testified that he found out that defendant was not employed by McDonald's as of that date. Defendant had

participated in part of an orientation a couple of days prior, but left during the orientation.

¶ 12 On the evening of April 8, 2009, the crime scene investigator, Michael Lewis, arrived at Pamela's residence. He observed that only Pamela's bedroom was disturbed. Dresser drawers, a jewelry box, and jewelry had been dumped out onto Pamela's bed. Michael Lewis dusted for prints and only was able to recover latent prints from the black jewelry box. He was unable to determine the number of perpetrators who could have been inside her home.

¶ 13 Melissa Gamboe, a fingerprint examiner, testified at trial. She is employed at the Illinois State Police Metro East Forensic Science Lab. She examined the latent or hidden fingerprints recovered from the jewelry box in Pamela's home. She testified that the print did not provide sufficient information to link the fingerprint to an individual.

¶ 14 Karie Darnell, the mother of defendant's girlfriend, testified that she did not approve of her daughter's relationship with defendant. However, she allowed defendant to stay in her home after he was released on bond in this case because defendant had no place to live. During the week of July 26, 2009, she overheard defendant's side of a telephone conversation. During this phone call, defendant told the person on the other end of the call that he could not believe he had been arrested for this crime, contending that all that was involved was costume jewelry. Karie could not remember which word he had used to describe his actions with regard to the costume jewelry—whether he "stole" the jewelry or "took" the jewelry. She also testified that defendant told the caller that it did not matter whether he committed the crime because they had no evidence linking him to the crime. Later in July 2009, Karie also heard defendant state, "They have nothing on me and they can't prove shit."

¶ 15 The jury deliberated and returned convictions on both charges.

¶ 16 Defendant was sentenced to a term of nine years' imprisonment for burglary. The court vacated the conviction for theft.

¶ 18 Defendant appeals to this court arguing that he was not proven guilty of residential burglary beyond a reasonable doubt. Defendant argues that the State failed to prove his guilt because there was no physical evidence linking him to the crime, there were no witnesses placing him in the vicinity of Pamela's home on the date of the crime, he had not confessed to the burglary, and there was no testimony that he admitted to burglarizing the home.

¶ 19 In order to obtain a conviction for residential burglary, the State must prove that the defendant knowingly entered the dwelling of another without authority and with an intent to commit a theft or felony. 720 ILCS 5/19-3(a) (West 2008); *People v. Maggette*, 195 Ill. 2d 336, 353, 747 N.E.2d 339, 349 (2001). Merely being in the possession of stolen property is not generally sufficient to sustain a burglary conviction. See *People v. Housby*, 84 Ill. 2d 415, 423, 420 N.E.2d 151, 155 (1981). If the State failed to prove defendant guilty of residential burglary beyond a reasonable doubt, his conviction must be overturned. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276-77 (1985); *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). The relevant question on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). On appeal, the reviewing court defers to the trier of fact on all issues related to the weight of the evidence and/or the credibility of the witnesses. *People v. Castillo*, 372 Ill. App. 3d 11, 20, 865 N.E.2d 208, 217 (2007).

¶ 20 In this case, the evidence against defendant was mostly circumstantial. Circumstantial evidence has been defined as being "proof of certain facts and circumstances from which the fact finder may infer other connected facts which usually and reasonably follow from the human experience and is not limited to facts that may reasonably have alternative, innocent

explanations." *People v. Diaz*, 377 Ill. App. 3d 339, 345, 878 N.E.2d 1211, 1216-17 (2007). Even if there is no direct evidence in a case, circumstantial evidence alone can establish guilt beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000). In considering circumstantial evidence, it is sufficient if all of the evidence taken as a whole satisfies the trier of fact beyond a reasonable doubt. *Id.* The jury should not disregard inferences which typically follow from the circumstantial evidence. *Id.* The jury does not have to consider all potential explanations consistent with innocence. *Id.*

¶ 21 We note that defendant acknowledges that the evidence was sufficient to prove his guilt of theft in that he was in possession of stolen property. *People v. Housby*, 84 Ill. 2d 415, 423, 420 N.E.2d 151, 155 (1981). Defendant cites *People v. Housby* for the proposition that simple possession of stolen property does not necessarily equate to burglary, but could amount to theft. He argues that the evidence was insufficient to establish his guilt of residential burglary—that he was the individual who broke into his aunt's home with the intent to commit a theft. He points to Bruce Johnson as the person who was found with the jewelry in his home—and suggests that possibly Bruce was the person who broke into his aunt's home.

¶ 22 The defendant in *People v. Housby* was convicted of burglary and theft, and those convictions were affirmed on appeal. *People v. Housby*, 82 Ill. App. 3d 537, 403 N.E.2d 62 (1980). The Illinois Supreme Court affirmed. *Housby*, 84 Ill. 2d 415, 420 N.E.2d 151. The jury in *Housby* was instructed as follows: " 'If you find that the defendant had exclusive possession of recently stolen property, and there was no reasonable explanation of his possession, you may infer that the defendant obtained possession of the property by burglary.' " *Id.* at 419, 420 N.E.2d at 153 (quoting Illinois Pattern Jury Instructions, Criminal, No. 13.21 (1968)). On appeal to the supreme court, the court analyzed whether a defendant's due process rights are violated by instructions which permit the inference of burglary from a defendant's possession of stolen property. *Housby*, 84 Ill. 2d at 423, 420

N.E.2d at 155. The court stated, "The person in exclusive possession may be the burglar, to be sure, but he might also be a receiver of stolen property, guilty of theft but not burglary, an innocent purchaser without knowledge that the item is stolen, or even an innocent victim of circumstances." *Id.* However, the court, adhering to the analysis of a United States Supreme Court case, *County Court v. Allen*, 442 U.S. 140, 157 (1979), concluded that the inference used in *Housby* stemming from the defendant's possession of stolen property did not violate his due process rights. *Housby*, 84 Ill. 2d at 424, 420 N.E.2d at 155. The factors which led to the conclusion that Housby's due process rights were not violated were: "(i) there was a rational connection between his recent possession of property stolen in the burglary and his participation in the burglary; (ii) his guilt of burglary is more likely than not to flow from his recent, unexplained and exclusive possession of burglary proceeds; and (iii) there was evidence corroborating Housby's guilt." *Id.*

¶ 23 The supreme court further explained its holding in *People v. Housby* in a subsequent case—*People v. Richardson*, 104 Ill. 2d 8, 470 N.E.2d 1024 (1984):

"*Housby* and the United States Supreme Court cases on which it is based [citations] involved jury instructions which encouraged the jury to draw inferences. The *Housby* test applies only to instructions which advise a jury of inferences it may draw; it insures that the jury applies the reasonable-doubt test." *Richardson*, 104 Ill. 2d at 11-12, 470 N.E.2d at 1026.

The court stated that intent to commit a crime is a state of mind which can be inferred from all surrounding circumstances. *Richardson*, 104 Ill. 2d at 12, 470 N.E.2d at 1026 (citing *People v. Terrell*, 99 Ill. 2d 427, 459 N.E.2d 1337 (1984); *People v. Richardson*, 32 Ill. 2d 497, 207 N.E.2d 453 (1965); *People v. Murff*, 29 Ill. 2d 303, 194 N.E.2d 226 (1963)). The elements of burglary are often proved by circumstantial evidence. *Richardson*, 104 Ill. 2d at 12, 470 N.E.2d at 1026.

¶ 24 Defendant posits that there is no evidence that he entered Pamela's residence with the intent to commit a felony, in part because there was no witness placing him in the home or in the vicinity on the date of the burglary. The fact that there was no eyewitness to this burglary does not negate the totality of the circumstantial evidence. *People v. Johnson*, 82 Ill. App. 3d 338, 343, 404 N.E.2d 796, 801 (1980). In *Johnson*, the facts that the defendant was seen with stereo speakers in the same building as the apartment that had been burglarized, that he participated in the sale of these stereo speakers that same evening, and that the speakers were positively identified as belonging to the victim were sufficient to prove his guilt of burglary beyond a reasonable doubt. *Johnson*, 82 Ill. App. 3d at 339-41, 404 N.E.2d at 798-99.

¶ 25 Defendant also contends that there were no fingerprints or other physical evidence at Pamela's home to connect him with the crime. As stated earlier, circumstantial evidence alone can be sufficient to support a conviction of burglary. *People v. McGee*, 373 Ill. App. 3d 824, 832-33, 869 N.E.2d 883, 891 (2007). In *McGee*, the court found that although there was no physical evidence or witnesses to the burglary, there was a rational connection between the defendant's possession of a Palm Pilot that had been taken from the vehicle, plus a closeness in time and proximity to the vehicle, and other corroborating evidence, which when taken as a whole were sufficient to support the burglary conviction. *McGee*, 373 Ill. App. 3d at 833-34, 869 N.E.2d at 892.

¶ 26 We turn to the evidence heard by the jury in this case as well as the manner in which the jury was instructed. Unlike in *Housby*, the jury was not told to draw inferences of the commission of burglary from defendant's possession of stolen property. The jurors were advised that they could consider circumstantial evidence and that they could consider the evidence in light of their own life experiences.

¶ 27 Defendant had periodically lived with his aunt Pamela. He would therefore have been



aware of her work schedule, as well as the layout of her home. Pamela testified that she left for work on that date at 5:30 a.m. and arrived home after work at about 3 p.m. She then found that her home had been burglarized. The only room that had been vandalized was her bedroom. Her jewelry box had been dumped out onto her bed.

¶ 28 On the date of the burglary, defendant contacted his stepgrandmother to pick him up at his girlfriend's home and to drop him off at the home of another friend, Bruce Johnson. Defendant told his stepgrandmother that he needed to get his uniform for his job at McDonald's and that the uniform was in Bruce Johnson's home. However, defendant was not employed by McDonald's. Defendant's stepgrandmother testified that she dropped him off at Bruce Johnson's home at about 7:30 a.m. but did not see him enter the home.

¶ 29 Officer Mendenhall testified that Bruce Johnson's home and Pamela's home were within walking distance from each other.

¶ 30 Bruce Johnson testified that defendant appeared at his home on the day of the burglary at sometime between 9:30 and 10 a.m. When defendant arrived at Bruce's home, he was in possession of four rings and two pairs of earrings. He asked Bruce Johnson if the stones in the jewelry were real or if the jewelry was considered costume jewelry. After some time in Bruce's home, Bruce saw defendant head to his dining room before he left. Officers arrived at Bruce's home shortly thereafter. He and the officers looked in the dining room into Bruce's jewelry box and located the rings that defendant had asked Bruce about. Bruce told the officers that defendant told him he was leaving the house to go purchase cigarettes and marijuana and to go to a pawn shop.

¶ 31 Officer Mendenhall took the rings to Pamela for identification. Pamela confirmed that the rings were hers.

¶ 32 Later that evening, defendant called Bruce Johnson and told him that he should not have given the jewelry to the police. Defendant also called his aunt Pamela, begging her not

to press charges. He did not detail the charges to which he was referring, but told his aunt that he had taken ecstasy pills. He did not specifically admit having been in her home or having taken jewelry from her home.

¶ 33 After the crime, and while living in the home of his girlfriend's mother, defendant was overheard during a couple of telephone conversations. In one conversation, defendant expressed disbelief that he could be in trouble for taking or stealing what ended up only being costume jewelry. In a second conversation, he stated that the police had no evidence linking him to the crime.

¶ 34 The jury was able to assess the credibility of all of the witnesses who testified during this trial. Based on all the forementioned circumstantial evidence, the jury could have easily found a rational connection between defendant's possession of Pamela's jewelry and his commission of the burglary.

¶ 35 We conclude that viewing this evidence in the light most favorable to the State, any rational trier of fact could have concluded that the elements of burglary were proven beyond a reasonable doubt. *Jackson*, 443 U.S. at 319.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 38 Affirmed.